

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

No. 77-1616

In the Supreme Court of the United States  
OCTOBER TERM, 1978

HAROLD O. NELSON, PETITIONER

v.

DEFENSE LOGISTICS AGENCY

*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT*

MEMORANDUM FOR THE RESPONDENT  
IN OPPOSITION

WADE H. MCCREE, JR.,  
*Solicitor General,*  
*Department of Justice,*  
*Washington, D.C. 20530.*

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Petitioner contends that the court of appeals erred in its summary affirmance of the district court's rejection of his claim that he was denied promotion because of his age.

The district court conducted a trial and found that age was not a factor in petitioner's failure to obtain promotion as a government employee (Pet. App. B). The court of appeals affirmed without opinion (Pet. App. A). Petitioner presents 21 questions for review by this Court, but most of them appear to have nothing to do with the issues resolved by the district court. For example, because the district court found no discrimination, it did not consider the time for filing claims (Pet. App. B-4). Some of the other questions—such as whether there is a

constitutional right to a jury trial in a suit against the government—have long since been resolved adversely to petitioner. See, e.g., *McElrath v. United States*, 102 U.S. 426. Moreover, the restitutive remedies sought here are of an equitable nature. The remainder of the questions simply challenge the district court's factual findings. As to these questions, no extraordinary circumstances call for review of the factual findings of the two lower courts. See, e.g., *Berenyi v. Immigration Director*, 385 U.S. 630.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. McCREE, JR.,  
*Solicitor General,*